

Amendment No. 2 to HB0353

Sargent
Signature of Sponsor

AMEND Senate Bill No. 670

House Bill No. 353*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-10-404(a), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subsection and substituting instead the following:

(a)

(1) The court shall prohibit any person convicted of a violation of § 55-10-401 from driving a vehicle in this state for a period of:

(A) One (1) year, if the conviction is a first offense;

(B) Two (2) years for a second offense;

(C) Six (6) years for a third offense; and,

(D) Eight (8) years for a fourth or subsequent offense.

(2) In the interest of public safety, a driver who has been prohibited from driving a vehicle in this state pursuant to this subsection (a) may apply for a restricted license subject to § 55-10-409.

SECTION 2. Tennessee Code Annotated, Section 55-10-407(c)(1), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by adding the language "person's driver license is currently suspended for an" between the language "the" and "implied consent" and by deleting the language "result" and by substituting instead "resulted".

SECTION 3. Tennessee Code Annotated, Section 55-10-407(d)(2) and (3), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), are amended by deleting the subdivisions in their entirety and redesignating the remaining subdivision appropriately.

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SECTION 4. Tennessee Code Annotated, Section 55-10-409(a)(2) and (3), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), are amended by deleting the subdivisions and substituting instead the following:

(2) Seriously injured or killed another person in the course of the conduct that resulted in the driver's conviction under § 55-10-401 or a similar offense in another state. A driver who has committed such an offense shall not be eligible for and the court shall not have the authority to grant the issuance of a restricted motor vehicle operator's license until such time as the period of suspension mandated by § 55-10-404 has expired, notwithstanding the fact that it may be the driver's first conviction.

SECTION 5. Tennessee Code Annotated, Section 55-10-409(b)(1), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subdivision in its entirety and substituting instead the following:

(1)

(A) Except as provided in subsection (a), if a person's motor vehicle operator's license has been revoked pursuant to § 55-10-404 or § 55-10-406, the person may apply to the trial judge or a judge of any court in the person's county of residence having jurisdiction to try charges for driving under the influence for a restricted driver license.

(i) If the person's present conviction for driving under the influence of an intoxicant is an offense for which subdivision (b)(2)(B) requires the court to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, the court may order the issuance of a restricted motor

vehicle operator's license subject to such limitations. The court shall have discretion to order additional limitations, including but not limited to geographic restrictions as provided in subsection (c), on the restricted motor vehicle license.

(ii) If the person's violation of § 55-10-406 or present conviction for driving under the influence of an intoxicant is not an offense for which subdivision (b)(2)(B) requires the court to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, the court may order the issuance of a restricted motor vehicle operator's license. The court shall have discretion to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device or place additional limitations on the person's restricted license; provided, however, that a restricted license issued pursuant to this subdivision (b)(1)(A)(ii) without an ignition interlock requirement shall be subject to geographic restrictions as provided in subsection (c).

(B)

(i) A Tennessee resident, whose operator's license has been revoked because of a conviction in another jurisdiction for operating a motor vehicle while under the influence of an intoxicant, may apply for a restricted license to a judge of any court in the person's county of residence having jurisdiction to try charges for driving under the influence. The court may order the issuance of a restricted motor vehicle operator's license. The court shall have discretion to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device or place additional limitations on the person's restricted license; provided, however, that a restricted license issued pursuant to this subdivision (b)(1)(B)(i) without an ignition interlock requirement shall be subject to geographic restrictions as provided in subsection (c). If the person has a prior

conviction within the past ten (10) years for a violation of § 55-10-401 or § 55-10-421, in this state or a similar offense in any other jurisdiction, the court shall be required to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device.

(ii) If a copy of the judgment of conviction certified by the court that tried the case in the other jurisdiction accompanies the restricted license application, the court may issue such order allowing the person so convicted to operate a motor vehicle including such restrictions ordered by the court that tried the case in the other jurisdiction provided such restrictions do not conflict with Tennessee statutes or regulations.

(C) A person ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device pursuant to this subsection (b) may apply for assistance to meet the requirement pursuant to § 55-10-419, except as provided in subdivision (b)(2)(C).

SECTION 6. Tennessee Code Annotated, Section 55-10-409(b)(2)(B)(i), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subdivision and substituting instead the following:

(i) The person was convicted of a violation of § 55-10-401 and had a blood or breath alcohol concentration of eight hundredths of one percent (.08%) or higher or a combination of alcohol in any amount and marijuana, a controlled substance, controlled substance analogue, drug, or any substance affecting the central nervous system;

SECTION 7. Tennessee Code Annotated, Section 55-10-409(b)(2), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting subdivisions (b)(2)(C) – (E) in their entireties and substituting instead the following:

(C) A person convicted of § 55-10-401, who is eligible for a restricted license under subsection (a) and who is not required to have an interlock device pursuant to

subdivision (b)(2) or other statute, may request the court order the installation and use of an ignition interlock in lieu of geographic restrictions or additional limitations on the restricted license. The person shall pay all costs associated with the device and is not eligible for ignition interlock fund assistance under § 55-10-419.

(D) A court may also order a person whose license has been suspended pursuant to § 55-10-407 to operate only a motor vehicle that is equipped with a functioning ignition interlock with or without geographic restrictions which shall remain on the vehicle during the entire period of the restricted license. A person ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device pursuant to this subdivision (b)(2)(D) may apply for assistance to meet the requirement pursuant to § 55-10-419.

SECTION 8. Tennessee Code Annotated, Section 55-10-409(c), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subsection in its entirety and substituting instead the following:

(c)

(1) If a court issues an order allowing a person to operate a motor vehicle with geographic restrictions, the court shall specify the necessary time and places of permissible operation of a motor vehicle, for the limited purposes of going to and from:

(A) And working at the person's regular place of employment;

(B) The office of the person's probation officer or other similar location for the sole purpose of attending a regularly scheduled meeting or other function with the probation officer by a route to be designated by the probation officer;

(C) A court-ordered alcohol safety program;

(D) A college or university in the case of a student enrolled full time in the college or university;

(E) A scheduled interlock monitoring appointment;

(F) A court ordered outpatient alcohol and drug treatment program; and

(G) The person's regular place of worship for regularly scheduled religious services conducted by a bona fide religious institution as defined in § 48-101-502(c).

(2) A court order issued under subsection (b) may be presented within ten (10) days after the date of issuance to the department, accompanied by a fee of sixty-five dollars (\$65.00) and proof to the satisfaction of the department that a functioning ignition interlock device has been installed and will be maintained on one (1) or more vehicles to be operated by the person for the duration of the restricted license, if such installation and maintenance is required by subdivision (b)(2)(B) or the court's order. If the person has first successfully completed a driver license examination, the department shall forthwith issue a restricted license specifying that such restricted license authorizes the person, except as provided in § 55-10-415(m)(1), to operate only noncommercial vehicles equipped with a functioning ignition interlock device, if required, and embodying additional limitations imposed by the court upon the person.

(3) If the violation resulting in the person's conviction for driving under the influence or the person's violation of § 55-10-406 occurred prior to July 1, 2013, the law in effect when the violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license unless the person petitions the court to consider the person's eligibility under the law in effect when the petition is filed.

SECTION 9. Tennessee Code Annotated, Section 55-10-409(d), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subsection in its entirety and substituting instead the following:

(d)

(1) Unless otherwise prohibited by subsection (a), the trial judge or a judge of any court in the person's county of residence having jurisdiction to try charges for driving

under the influence may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502 to any person whose motor vehicle operator's license has been revoked pursuant to § 55-10-404 and who has a prior conviction within the past ten (10) years for a violation of § 55-10-401 or § 55-10-421, in this state or a similar offense in any other jurisdiction.

(2)

(i) If the court orders the issuance of a restricted motor vehicle operator's license pursuant to this subsection (d), the court shall also order the person, except as provided in § 55-10-417(m)(1), to operate only a motor vehicle that is equipped with a functioning ignition interlock device. The restriction shall be for the entire period of the restricted license and for a period of six (6) months after the license revocation period has expired if required by § 55-10-417(l).

(ii) Sections 55-10-417, 55-10-418 and 55-10-419 shall apply when a person is ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device pursuant to this subsection (d).

SECTION 10. Tennessee Code Annotated, Section 55-10-411(h)(3), as created by Chapter ___ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subdivision in its entirety and substituting instead the following:

(3) "Functioning ignition interlock device" means a device that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device and which devices, on all new installations after the effective date of this act, must employ technology capable of taking a photo identifying the person providing the breath sample, recording the date, the time and the test result along with the photo of the person providing the test and storing such information on the device for transfer to remote storage and reporting; provided, however, that the department of safety shall

permit the continued installation by an ignition interlock provider of an ignition interlock device that is not capable taking photos or recording and storing the information required by this subdivision for up to six (6) months from the earliest effective date of this act; and

SECTION 11. Tennessee Code Annotated, Section 55-10-417(a)(2), as created by Chapter __ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subdivision and substituting the following:

(2) If a person is convicted of a first offense of § 55-10-401, and the person is not required to operate only a motor vehicle with an ignition interlock device pursuant to § 55-10-409(b)(2)(B), and the person is otherwise eligible for a restricted license pursuant to § 55-10-409(b)(1)(A), such person may request and the court may order the installation and use of an ignition interlock device in lieu of geographic restrictions or additional limitations on the restricted license. A person so requesting shall pay all costs associated with the ignition interlock device and no funds from the interlock assistance fund shall be used to pay any cost associated with the device, regardless of whether or not the person is indigent.

SECTION 12. Tennessee Code Annotated, Section 55-10-417(b), as created by Chapter __ of the Public Acts of 2013 (HB 180/SB 186), is amended by deleting the subsection in its entirety.

SECTION 13. Tennessee Code Annotated, Section 55-10-419(g)(3)(B) and (C), as created by Chapter __ of the Public Acts of 2013 (HB 180/SB 186), are amended by deleting the subdivisions and substituting instead the following:

(B) Beginning on July 1, 2013, and annually thereafter, the treasurer shall conduct an analysis to determine the solvency of the interlock assistance fund. The treasurer may declare a surplus if the analysis determines that there is a balance in excess of the amount necessary to maintain the solvency of the fund, and shall report

the amount of any surplus to the commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51.

SECTION 14. Tennessee Code Annotated, Section 55-50-502(c)(3)(A), is amended by deleting the language:

to operate a motor vehicle for the purpose of going to and from and working at the person's regular place of employment.

and substituting instead the language:

to operate a motor vehicle for the purpose of going to and from and working at the person's regular place of employment or to operate only a motor vehicle that is equipped with a functioning ignition interlock device. The trial judge may order the issuance of a restricted license allowing a person whose license has been suspended due to a conviction for violating § 39-14-151 or title 55, chapter 10, part 5 to operate a motor vehicle for the purpose of going to and from and working at the person's regular place of employment.

SECTION 15. Tennessee Code Annotated, Section 55-50-502(c)(3)(B), is amended by deleting the subdivision in its entirety and substituting instead the following:

(B) The judge may order the issuance of a restricted license, if

(i) Based upon the records of the department of safety the person does not have a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 in this state, or a similar offense in another state; and

(ii) No person was seriously injured or killed in the course of the conduct that resulted in the driver's conviction under § 55-10-401.

SECTION 16. Tennessee Code Annotated, Section 55-50-502(c)(3)(C), is amended by deleting the language "The trial judge", substituting instead the language "If the trial judge imposes geographic restrictions, the trial judge", adding the following subdivision, and redesignating the current subdivision (vi):

(vi) A court ordered outpatient alcohol and drug treatment program; and

SECTION 17. Tennessee Code Annotated, Section 55-50-502, is amended by deleting subdivision (c)(3)(D) and by substituting instead the following:

(D) If the violation resulting in the person's conviction for driving under the influence occurred prior to July 1, 2013, the law in effect when the violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license unless the person petitions the court to consider the person's eligibility under the law in effect when the petition is filed.

SECTION 18. Tennessee Code Annotated, Section 55-50-502(c)(3)(E), is amended by deleting the subdivision in its entirety and substituting instead the following:

(E) The person so arrested may obtain a certified copy of the order and within ten (10) days after it is issued present it, together with an application fee of sixty-five dollars (\$65.00), to the department, which shall forthwith issue a restricted license embodying the limitations imposed in the order.

SECTION 19. Tennessee Code Annotated, Section 55-50-502(c)(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) Where a nonresident whose license has been suspended or revoked by any other state subsequently becomes a bona fide resident of this state, and where the person has been granted a restricted license by the other state if the triggering offense would under the laws of this state provide for the issuance of a restricted driver license upon petition to a judge of the court of general sessions, or its equivalent, for the county wherein the person resides, the court may order the issuance of a restricted motor vehicle operator's license. The court shall have discretion to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device or place additional limitations on the person's restricted license; provided, however, that a restricted license issued pursuant to this subdivision (c)(4) without an ignition interlock

requirement shall be subject to geographic restrictions, as provided in subdivision (c)(3), during the mandatory revocation/suspension period. If the person has a prior conviction within the past ten (10) years for a violation of § 55-10-401 or § 55-10-421, in this state or a similar offense in any other jurisdiction, the court shall be required to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device. The person may obtain a certified copy of the order and within thirty (30) days after it is issued present it, together with an application fee of sixty-five dollars (\$65.00), to the department, which shall then issue a restricted license embodying the limitations imposed in the order.

SECTION 20. Tennessee Code Annotated, Title 55, Chapter 10, Part 4, is amended by adding the following as a new section:

55-10-422.

A person whose license has been suspended pursuant to this part and who applies for a restricted license to operate only a motor vehicle that is equipped with a functioning ignition interlock device shall be required to pay a program development fee of eight dollars (\$8.00). The fee required by this section shall terminate on June 30, 2014.

SECTION 21. Section 20 of this act shall take effect upon becoming law, the public welfare requiring it. All other sections of this act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to offenses committed on or after such date.